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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1953.
No. 211

JESUS LAGUANA,

Petitioner,

vs.

ARCHIE ANSELL, Acting Tax Commissioner and Acting Treasurer, Government of Guam, and UNITED STATES OF AMERICA,

Respondents.

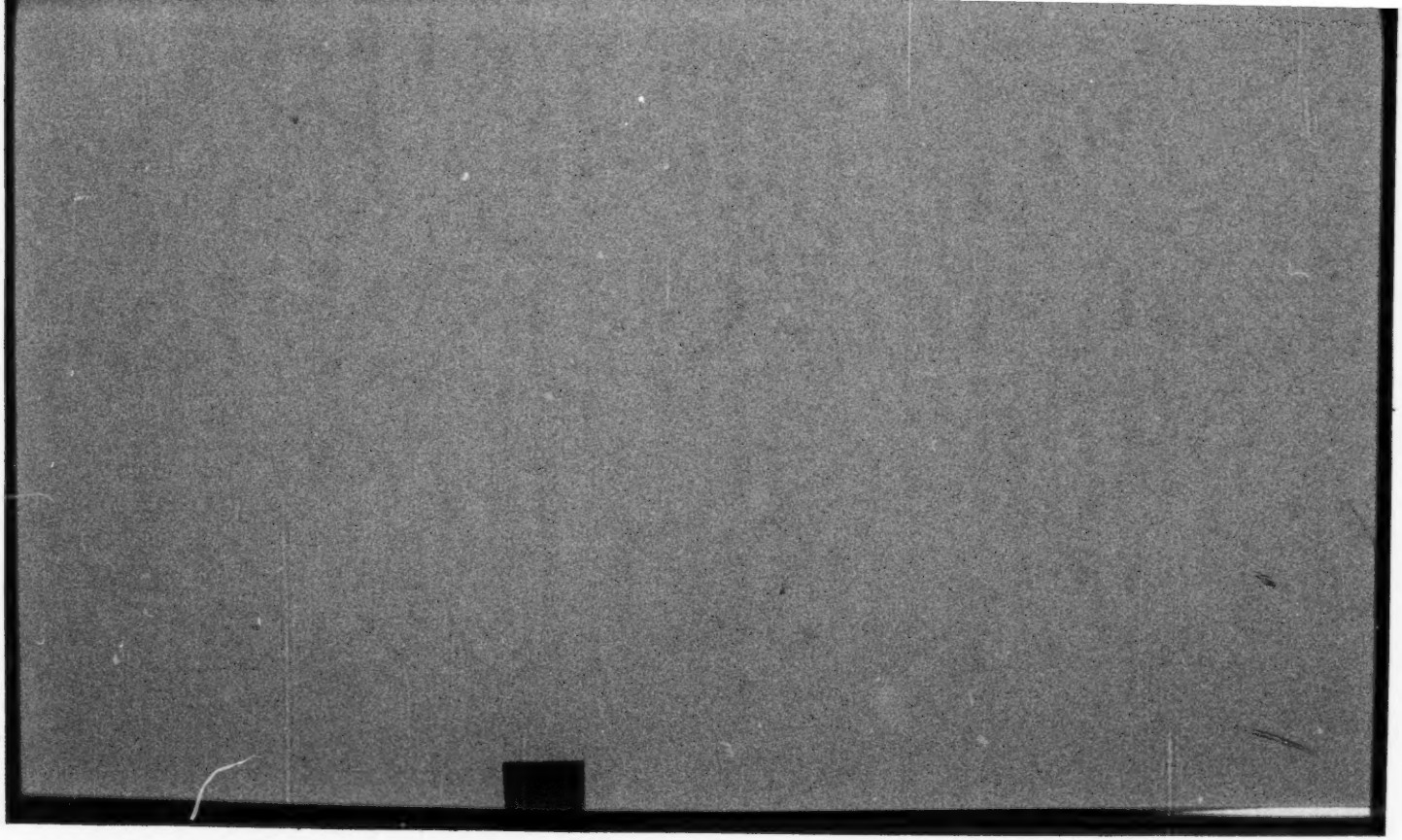
PETITION FOR WRIT OF CERTIORARI.

To the United States Circuit Court of Appeals for the Ninth Circuit.

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ARCHIE ANSELL, Acting Tax Commissioner and Acting Treasurer, Government of Guam, and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Jesus Laguana, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit entered in the above case on April 15, 1954.

Opinions Below.

The opinion of the District Court of Guam [R. 41-49] is reported at 102 F. Supp. 919; the opinion of the Court of Appeals for the Ninth Circuit [R. 71] is reported at 212 F. 2d 207. Both opinions are set out in the Transcript of Record at the places indicated.

Grounds on Which the Jurisdiction of This Court Is Invoked.

Petitioner predicates his petition for writ of certiorari on the authority of this Court to review judgments of the United States Courts of Appeals. The judgment of the Court of Appeals for the Ninth Circuit is dated April 15, 1954, and was entered on the same day [R. 72]. The jurisdiction of this court is invoked under Chapter 646 of the Act of June 25, 1948, 62 Stat. 928 (28 U. S. C., Sec. 1254).

Questions Presented for Review.

This appeal involves a suit for refund of income taxes assessed and collected by the Government of Guam under authority allegedly conferred upon it by Section 31 of the Organic Act of Guam, C. 512, 64 Stat 384. Section 31 of that Act became effective on January 1, 1951, and provides as follows:

> "Section 31. The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam."

Shortly thereafter, the United States Treasury Department ruled (I. T. 4046, 1951-1 Cum. Bul. 57) that ". . . the meaning of Congress in the Organic Act of Guam

. . ., is to set up a separate income tax system for Guam, which is a duplicate of the Federal Income Tax system, and that Congress intended the United States and Guam to be separate and distinct tax jurisdictions, although their income tax laws arise from an identical statute applicable to each."

As a result of this gratuitous ruling, no sanction for which can be found within the four corners of the Act, tremendous practical difficulties have arisen. The little Island of Guam has been compelled to attempt to duplicate on Guam the entire income tax structure of the United States; citizens of the United States residing on Guam and domestic corporations doing business on Guam are required to file returns with both the United States and Guam, thereby exposing them to double taxation; effective relief from wrongful or excessive collection of income taxes has been swept away; Guamanians have been deprived of important tax benefits under the reciprocal tax-benefit arrangements between the Philippine Islands and the United States; and endless problems of interpretation in adapting the income tax provisions of the Internal Revenue Code to Guam have resulted. The instant case squarely challenges the validity of the Treasury Department's ruling.

Consequently, the first question presented for review is whether, in enacting Section 31 of the Organic Act of Guam, Congress created an income tax system for Guam separate from that of the Federal income tax system, as respondents contend, or whether it merely extended the Federal income tax system to Guam, as petitioner contends.

The District Court of Guam expressed the view that respondents were in error but nevertheless held with them in order to avoid further confusion. In its opinion, the Court stated:

> "The question remains as to whether Sec. 31 imposes a Federal tax to be collected by the United States or a territorial tax to be collected by the Government of Guam. At the conclusion of oral argument I expressed the view to counsel in chambers that I believed the United States Congress intended to impose a Federal income tax . . ." [R. 46].

but later in its opinion the Court concluded:

> "Regardless of my initial view that Sec. 31 imposed a Federal tax to be collected by the United States, I believe that I shall add to any existing confusion by persisting in that view in the light of the position taken by the governments involved and my conviction that in any event a tax is imposed." [R. 48-49.]

The Court of Appeals for the Ninth Circuit failed to resolve the "confusion" and in spite of the gravity of the issues which were being presented for the first time in any appellate court, gave no answer to the problems raised on this appeal. Its opinion in its entirety is as follows [R. 71]:

> "Per Curiam
>
> "For the reasons given in the Court's opinion filed February 29, 1952, 102 F. Supp. 919, the judgment is affirmed."

The second question presented for review is whether petitioner, who meets all the requirements of Section 251 of the Internal Revenue Code, is entitled to the benefits of that section. This question arises in the following manner:

Section 251 of the Internal Revenue Code provides (*inter alia*) that "In the case of citizens of the United States . . . gross income means only gross income from sources within the United States . . . If 80 per centum or more of the gross income of such citizens . . . was derived from sources within a possession of the United States; and . . . If, in case of such citizen, 50 per centum or more of his gross income . . . was derived from the active conduct of a trade or business within a possession of the United States . . . as an employee . . . of another." In other words, citizens of the United States need not pay a tax on income earned within a possession of the United States provided the statutory requirements are met.

The parties stipulated and the District Court found that petitioner is a citizen of the United States and now and ever since his birth has been a resident of Guam (a possession of the United States within the meaning of Section 251—I. T. 4046, *supra*), and that petitioner's sole source of income during the taxable period was remuneration for personal services rendered on Guam to a Guam corporation as its employee and paid to him on Guam. [R. 36-39; 50-53.] Admittedly, therefore, petitioner meets all the requirements of Section 251, and the income reached here is excluded from taxation thereunder, if Section 251 is available to taxpayers on Guam.

It seems clear from the plain language of the Organic Act that Congress intended Section 251 of the Internal Revenue Code to remain available to Guamanian taxpayers. Section 31 of the Organic Act of Guam provides that "The income tax laws in force in the United States of America . . . shall be held to be likewise in force in Guam." Since Section 251 of the

Internal Revenue Code unquestionably is part of the "income tax laws in force in the United States of America," taxpayer, it would seem, is entitled to the benefits of Section 251 regardless of whether Section 31 of the Organic Act imposes a Federal or territorial tax. The courts below nevertheless held that taxpayer is not entitled to those benefits. The validity of that conclusion, in face of apparently plain legislative direction to the contrary, is the second question presented for review.

Statutory Provisions Involved.

Organic Act of Guam, c. 512, 64 Stat. 384:

> Sec. 31. The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.
>
> (48 U. S. C., 1946 Ed., Supp. IV, Sec. 1421i.)

Internal Revenue Code, Section 251(a):

> General Rule.—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—
>
> (1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and
>
> (2) If in the case of such corporation, 50 per centum or more of its gross income (computed without benefit of this section) for such period or such

part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

26 U. S. C., Section 251.

(The balance of Section 251 is printed in the Appendix.)

Statement of the Case.

This is a refund suit for income taxes imposed by the Organic Act of Guam, paid under protest and alleged to have been erroneously and illegally collected, brought by taxpayer against Archie Ansell, Acting Tax Commissioner and Acting Treasurer, Government of Guam, and which taxes Ansell has refused to repay despite taxpayer's demand for repayment. The second amended complaint sets forth the basis of the action [R. 21-25], and in particular asserts that the levy, demand, withholding and collection of the tax were invalid and illegal in that all taxpayer's income for the year 1951, to and including August 28, 1951, was remuneration for personal services rendered to a certain Ambros, Inc., on Guam, as an employee, and it reasonably appears that all of the income of taxpayer for the balance of the year 1951 would be so earned [R. 24].

After the second amended complaint was filed, but before defendant Ansell had answered [R. 1-2], the United

States applied for permission to intervene as a party defendant in the action [R. 25-27]. Following a hearing and on consent of both taxpayer and defendant Ansell, the District Court made an order granting the motion and permitting the United States to intervene as a party defendant [R. 2, 28].

After answers had been filed by both defendants [R. 29-35], the facts were stipulated [R. 36-39, 42]. The stipulation was filed at the trial in the court below [R. 2-3]. Subsequently and after final decision had been rendered in favor of the defendants, on taxpayer's motion, formal findings of fact and conclusions of law were made by the court below, principally incorporating the stipulated facts [R. 49-50, 50-54].

These facts as thus stipulated and found are as follows:

Taxpayer is a citizen of the United States and now and ever since his birth has been a resident of Guam [R. 36, 50-51]. Taxpayer is now, and at all times mentioned has been an employee of Ambros, Inc., a Guam corporation, and taxpayer's sole source of income has been remuneration for personal services rendered to that corporation on Guam and paid to him on Guam. [R. 36, 51]. Appellee Ansell was the Acting Tax Commissioner and Acting Treasurer of Guam, and in such capacity was the duly qualified and acting officer required by law to levy and collect taxes due the Government of Guam, but was not a tax collector for the Bureau of Internal Revenue of the United States Treasury [R. 36-37, 51]. On August 28, 1951, Ansell in his said capacity made written demand upon Ambros, Inc., for immediate payment of income taxes withheld from taxpayer's wages earned as an employee of Ambros, Inc., for the period January 1, 1951, to and

including June 30, 1951 [R. 8-9, 37, 51]. On August 28, 1951, pursuant to this written demand and prior to the commencement of the instant action, Ambros, Inc., paid to Ansell as Acting Tax Commissioner and Acting Treasurer, Government of Guam, the sum of $28.20, being the amount of taxes which it had withheld from taxpayer's wages for the period from January 1, 1951, to and including June 30, 1951 [R. 37-38, 52]. This payment was accompanied by written protest on behalf of the taxpayer [R. 11, 38, 52]. On August 28, 1951, taxpayer made a written claim and demand upon Ansell for the refund and repayment of the $28.20 which claim and demand he rejected in writing [R. 12, 38, 52-53]. No part of this sum of $28.20 has been refunded or repaid to taxpayer or to anyone on his behalf [R. 38-39].

After trial, the District Court concluded that [R. 53-54]:

> "2. The effect of Section 31 of the Organic Act of Guam is to impose a territorial income tax with the full burden of income taxation measured by the Federal Tax.
>
> "3. Although upon the facts as found by the court, the plaintiff fulfills the requirements of Section 1621(a)(8)(B) of the Internal Revenue Code of the United States,[1] the benefits of that section are not available to the plaintiff by virtue of Section 31 of the Organic Act of Guam."

Accordingly, the District Court ordered that the action be dismissed on its merits at taxpayer's cost [R. 49, 57].

---

[1]Section 1621(a)(8)(B) of the Internal Revenue Code, in effect, excepts income falling within the provisions of Section 251 from the withholding tax provisions of the Internal Revenue Code.

The District Court of Guam had jurisdiction over the instant action by virtue of Section 22(a) of the Organic Act of Guam, c. 512, 64 Stat. 384 (48 U. S. C., 1946 ed., Supp. IV, Sec. 1424(a)), and Section 62 of Public Law 17, First Guam Legislature [R. 53], since the cause arises under the laws of the United States, namely, the Organic Act of Guam and the Internal Revenue Code, and particularly involves the meaning and effect of Sections 30 and 31 of the Organic Act of Guam (48 U. S. C., 1946 ed., Supp. IV, Secs. 1421h and 1421i), and further since this is a cause in Guam, jurisdiction over which has not been transferred by the legislature to another court.

Reasons Relied on for the Allowance of the Writ.

Petitioner relies upon the following reasons for the allowance of the writ of certiorari in the instant case:

1. The Court of Appeals for the Ninth Circuit failed to consider or to answer questions of paramount and fundamental importance to the Island of Guam and its inhabitants, although the problems were squarely raised and presented. The significance of those unanswered questions can be measured by the following results which have already flowed from the judgments below: (a) taxpayers on Guam now have no effective remedy for recovering taxes wrongfully collected, (b) citizens of the United States residing in Guam are exposed to double taxation, (c) United States citizens residing in Guam are deprived of important tax benefits in reporting their income tax to the Philippine Islands, and (d) the Island

of Guam is needlessly compelled to duplicate on Guam the entire income-tax structure in force in the United States.

2. The Court of Appeals for the Ninth Circuit and the District Court of Guam, in spite of their expression of opinion that petitioner was correct in his contention that a Federal tax was imposed, held for respondents lest they "add to any existing confusion by persisting in that view." Since the courts subordinated their conviction to "the position taken by the governments involved," the courts abandoned their historic function.

3. Because of the decisions of the courts below, Guam has been deprived of substantial fiscal benefits in spite of apparent Congressional intention to the contrary.

4. The decisions of the courts below depart from established principles of statutory construction laid down by this Court.

5. Litigation now pending in the Federal Courts relative to the applicability of the estate tax laws to Porto Rico and raising issues substantially like those in the instant case has already produced decisions in the Court of Appeals for the Second Circuit and the Tax Court of the United States basically opposed to the opinions of the courts below.

ARGUMENT.

I.

Substantial Legal Issues, Directly and Vitally Affecting the Economy of Guam and All Residents of the Island, Although Squarely and Properly Raised and Presented, Were Either Not Considered at All by the Courts Below or Resolved Contrary to the Courts' Announced Beliefs in Order to Avoid Adding "to Any Existing Confusion" [R. 49] Growing Out of the Challenged Rulings.

Implicit in the holding of the courts below that Congress, in enacting section 31 of the Organic Act of Guam, intended to create a separate taxing jurisdiction on Guam duplicating in its entirety the Federal income tax system, are a great number of practical problems of which the following are illustrative:

A. Taxpayers on Guam Now Have No Effective Remedy for Recovering Taxes Wrongfully Collected.

A taxpayer in the United States from whom taxes have been wrongfully collected has three procedural alternatives: (1) a suit in the United States District Court under Title 28, U. S. Code, Sec. 1340, against the collector who collected the tax (or against the district director of internal revenue, Sec. 3, Public Law 567, 82nd Congress, approved July 16, 1952); (2) a suit against the United States in the Court of Claims under Title 28, U. S. Code, Sec. 1491; and (3) a suit against the United States in the District Court under Title 28, U. S. Code, Sec. 1346. The Guamanian taxpayer, however, has no direct remedy against his Government since there is no legislation authorizing such procedure and the Government of Guam cannot be sued without its consent. Compare *Crain v.*

The Government of Guam, 195 F. 2d 414 (C. C. A. 9), where the U. S. Court of Appeals for the Ninth Circuit held that Guam has "sovereign immunity" from suit by Guamanians for declaratory judgment as to their income tax liability to Guam and the United States.

The Guamanian, therefore, has only one remedy—to sue the collector who collected the disputed tax, a right that has been characterized by this Court as "an anomalous relic of bygone modes of thought." (*George Moore Ice Cream Co. v. Rose,* 289 U. S. 373, 382.) This characterization is especially apropos in this instance, for:

(a) Guam, in the three and a half years since the tax became effective, has already had four collectors, three of whom no longer reside on the Island. Indeed, Archie Ansell, the defendant in the instant case, now resides in Ethiopia.

(b) Judgments against collectors of Federal taxes are ultimately satisfied by the United States through procedure established by 28 U. S. C., Sec. 2006; there is no similar provision under either the Guam or United States laws for payment of judgments against the collector of a Guamanian territorial tax.

In effect, therefore, because of the decisions in the courts below, taxpayers on Guam have no adequate remedy for recovering taxes wrongfully collected although their taxes are paid and collected under laws that are supposedly identical with the income tax laws of the United States.

B. Respondents' Construction of Section 31 of the Organic Act Has Exposed Citizens of the United States Residing on Guam to Double Taxation.

In a ruling that has never been tested in the courts, the U. S. Treasury Department, in 1934, ruled (I. T. 3690, 1944 Cum. Bul. 164) that a provision similar to section 31 contained in the Naval Appropriations Act of 1921 (c. 44, 42 Stat. 122, 123; 48 U. S. C., 1946 ed., Sec. 1397) created a separate taxing jurisdiction in the Virgin Islands and further held that:

> ". . . a citizen of the United States is required to file a return with the proper collector of internal revenue in this country, accounting for income from all sources both within and without the United States. Citizens of the United States deriving income from sources in the Virgin Islands, such as salaries paid by the Federal Government or private employers, are liable for income tax to the Virgin Islands and they are also required to file returns in the islands. A taxpayer has no option in this respect, and, if liability for income tax is incurred in the Virgin Islands as well as in the United States, a return must be filed in each taxing jurisdiction. The amount of tax paid or accrued to the Virgin Islands may be claimed as a credit against the amount of tax due the United States Government, in accordance with the provisions of section 131(a) of the Internal Revenue Code."

Because of the similarity between the provisions of the Naval Appropriations Act of 1921 extending the income tax to the Virgin Islands and section 31 of the Organic Act of Guam, the Treasury Department has ruled that a separate taxing jurisdiction has also been created on

Guam and that citizens of the United States residing on Guam must file a tax return with both the United States and Guam. (I. T. 4046, 1951-1 Cum. Bul. 57.)

The Treasury Department has suggested (see last quotation) that the taxpayer is shielded from double taxation by reason of section 131(a) of the Internal Revenue Code, which allows a credit in the United States return for taxes paid to a possession.

Section 131(b), however, places a limit on the amount of tax that can be taken as a credit under Section 131(a)(1). That section permits the taxpayer to set-off in his United States return only that proportion of the tax paid to the possession which the "* * * net income from sources within such country bears to his entire net income for the same taxable year * * *." A taxpayer, therefore, who resides on Guam and who derives part of his income from Guam and part from the United States would have to report to Guam, and pay a tax on, all his income "from whatever source derived" (I. T. 2946, XIV-2 Cum. Bull. 109 (1935)), but would get only partial credit in his United States return for his Guam tax.

In reply to this problem of double taxation respondents have suggested several schemes for avoiding the second tax, all of which do violence to the statutory language on which they are predicated. They are possible only because respondents both make and enforce the rules as they choose. For example, respondents, in their brief in the Court of Appeals, stated (p. 57) that "Sections 251 and 252 (of the Internal Revenue Code) afford citizens of Guam protection from double taxation, *i.e.*, from the federal tax." This just is not so. If the courts below are correct, and if the territorial tax theory is followed to its

logical conclusion, a citizen of the United States qualifying for the exclusion provided by Section 251 must report and pay a tax on all his income to Guam and must report to the United States and pay a tax on all income derived from sources within the United States. Such taxpayer may not take a credit for his Guam tax when reporting his income to the United States, for Section 251(h) plainly provides:

> "(h) Credits Against Tax: Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by Section 131."

Neither may he take a credit for his Federal tax in reporting his Guam tax, for there is no authority whatsoever for such credit. Respondents sometimes suggest (*cf.* I. T. 2946) that he may do so by virtue of the provisions of Section 131 of the Internal Revenue Code, but Section 131 has no application to credits for Federal taxes. Furthermore, as we have shown, section 131(b) limits the amount of the deduction and fails to afford complete relief—unless respondents conveniently wish to close their eyes to this limitation. Accordingly, Section 251, contrary to respondents' contention, does not "afford citizens of Guam protection from double taxation."[2]

---

[2]Section 251, as we have seen, grants a tax benefit to citizens of the United States who reside in a possession. Section 252 limits the Federal tax liability of citizens of a possession of the United States who are not otherwise citizens of the United States. This section, too, affords no protection against double taxation. Taxpayers claiming the benefit of Section 252 compute and pay their taxes "in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from . . . sources" within the United States. Section 252. In

Apparently respondents themselves are unable to agree on a solution to this problem. Logically, if the theory of a territorial tax is properly followed, a citizen of the United States residing on Guam should report to Guam all his income from whatever source derived just as a citizen in the United States, residing in the United States, must report all his income from whatever source derived, except, in both cases, income exempt by law. The United States in fact did follow its theory of a territorial tax to its logical conclusion and in (6033) IR-Mimeograph No. 73, Com. No. 7, December 2, 1952, ruled:

> "3. A citizen of the United States who is a resident of Guam is liable to Guam for tax on his income from whatever source derived, except such as may be exempt from the tax by statutory provisions. . . ."

The Government of Guam apparently recognizing that this ruling would inevitably subject its taxpayers to a double tax, issued a different ruling with respect to income that must be reported by citizens of the United States residing in Guam. In its instruction pamphlet entitled How to Prepare Your Guam Income Tax Return on Form 1040, for 1951, the Government of Guam, Department of Finance, at page 3, ruled:

> ". . . Gross income, for Guam tax purposes, includes in general, compensation or wages for per-

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other words, a taxpayer within the provisions of Section 252 is taxed "as if he were a nonresident alien individual" (Reg. 111, Sec. 29, 252-1) and is prohibited from taking the credit provided by Section 131 by reason of the provisions of Section 216 of the Internal Revenue Code which provides, in part, as follows:

> "A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131 . . ."

sonal and professional services, business income, profits from sales of and dealings in property, interest, rent, and dividends and all other gains, profits and income *derived from or earned in Guam* unless such income is exempt by law . . ." (Emphasis supplied.)

It would appear that respondents themselves should invite a decision by this Court to resolve this real difference between themselves.

C. Respondents' Interpretation Has Deprived Guamanian Taxpayers of an Important Credit in Reporting Their Income Tax to the Philippine Islands.

In many ways, the economy of Guam is closely allied with that of the Philippine Islands, the closest substantial market for labor and materials. Consequently, many citizens of the United States have developed business interests in both places and are exposed to taxation by the Philippine Islands, Guam and the United States. As a result, these citizens have a vital interest in and are directly affected by any tax arrangement between the United States and the Philippine Islands.

The basic arrangement between the United States and the Philippine Islands is covered by section 131(a)(3) of the Internal Revenue Code which provides as follows:

"SEC. 131. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

"(a) Allowance of Credit.—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102 and except the additional tax imposed for the taxable year under the provisions of

section 127(c)(3) and except the tax imposed under subchapter E and except, with respect to the tax imposed under D, only to the extent provided in subsection (j) shall be credited with:

* * * * * * * *

"(3) Alien resident of the United States or Puerto Rico.—In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; . . ."

In order to secure the benefits of Section 131(a)(3) to their nationals, the Philippine Islands has fulfilled the requirements of that section by granting "a similar credit to citizens of the United States residing in (their) country." However, they have held that this section obligates them to allow a deduction only for income taxes of the United States and that they are under no duty to give United States citizens a credit for taxes paid in Guam because our courts have held in the instant case that the tax paid to Guam is a territorial tax and not a Federal tax. Accordingly, Guamanian taxpayers may not take credit for income taxes paid to Guam when reporting and paying income taxes to the Philippine Islands, adding still another burden to Guam and Guamanians whose welfare has always been a matter of Congressional concern.

D. Since Even Respondents Concede That U. S. Citizens Residing on Guam Must File a Federal Tax Return as Well as a Territorial Tax Return, a System for Collecting Federal Taxes Must Be Established and Maintained on Guam in Any Event; There Is Therefore No Sense in Requiring the Island of Guam "to Set Up a Separate Income Tax System . . . Which Is a Duplicate of the Federal Income Tax System" (I. T. 4046, 1951-1 Cum. Bul. 57) Especially Since Both Taxes Are "Covered Into the Treasury of Guam" (48 U. S. C., 1946 ed., Supp. IV, Sec. 1421(h)).

As we pointed out above, the Treasury Department ruled in 1944 with respect to the Virgin Islands that:

> ". . . citizens of the United States deriving income from sources in the Virgin Islands, such as salaries paid by the Federal Government or private employers, are liable for income tax to the Virgin Islands and they are also required to file returns in the islands. A taxpayer has no option in this respect, and, if liability for income tax is incurred in the Virgin Islands as well as in the United States, a return must be filed in each taxing jurisdiction. . . ." (I. T. 3690, *supra*.)

A like ruling is now applicable to Guam. (I. T. 4046, 1951-1 Cum. Bul. 57.) Hence, two complete income tax systems, predicated on the exact, same law, are in force in the Island of Guam. Through the Federal system, according to figures submitted to the Court of Appeals by respondents, $9,850,000.00 was collected from January 1, 1951, through February 28, 1954. During the same period, $11,077,846.63 was collected as a territorial tax pursuant to section 31. All of the money was paid into the Treasury of Guam by reason of the provisions of section 30 of the Organic Act which requires all "Federal in-

come tax . . . (to) be covered into the treasury of Guam and held in account for the government of Guam." (48 U. S. C., 1946 ed., Supp. IV, Sec. 1421h.) As a result, two complete tax collecting systems are now maintained to recover one tax for the use of a single jurisdiction. To date respondents have not suggested a single reason to justify this anomaly. We respectfully suggest that no good reason exists, especially in view of the physical and economic limitations of the Island. As the District Court observed [R. 47], "There is also to be considered in support of this view ['that the United States can make more effective collections,' R. 47] that to expect a newly created government to be able to deal with the complexities of the present income-tax laws is, to say the least, questionable."

In this connection, section 62 of the Internal Revenue Code is noteworthy. It provides that:

> "The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter."[3]

Mechanically, this section carried over into a territorial system is inoperative since Guam does not have the corresponding officers. Furthermore, it is absurd to believe that Congress was willing to trust to territorial administration and interpretation the myriad problems that challenge a tried, superior staff in Washington.

We have not, by any means, exhausted the problems that have already arisen out of respondents' insistence

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[3]For implied changes due to the enactment of the recent Reorganization Acts see Sec. 1, 2 Reorganization Plan No. 26 of 1950 (Eff. July 31, 1950, 15 F. R. 4935, 64 Stat.)

that Congress created a dual system of taxation.[4] And, doubtlessly, future years will uncover many more. One would therefore think that respondents undertook this burden and confusion only because they were compelled to do so by Congressional mandate. Nothing is further from the truth.

Not a single word in the Organic Act suggests that Congress intended the result reached by respondents. Even its Congressional history carries no such suggestion. Instead, respondents predicate their case on the history of federal income tax laws passed by Congress for our *other* insular possessions. Respondents take us back some forty years to the time when the income tax laws were first enacted. In those early stages, Congress extended the federal income tax to the Philippine Islands and Porto Rico and expressly provided that the taxes so levied should be collected by the administrative internal revenue officers of those islands. (Income Tax Act of 1913, chap. 16, 38 Stat. 114, 166-181, Sec. II, M.) The Government then took the position that Congress had created a new taxing jurisdiction in each of those islands and that the tax in each jurisdiction was measured by the provisions and rates of the federal law. In other words, the Government held that at the same time Congress was enacting a federal income tax law for the United States it was also

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[4]One further example will suffice. Subchapter E of the Income Tax Law (Internal Revenue Code, Secs. 480-482) imposes a tax on self-employment income, thereby extending the provisions of the Social Security Law to some classes of self-employed persons. Since this subchapter is part of the "income-tax laws in force in the United States" (Sec. 31) presumably it is extended to the Island of Guam. However, Subchapter E makes no provision for the payment of any benefits. Accordingly, under a separate tax system, it must be and is disregarded.

enacting the identical laws for those islands in its capacity as legislature for the possessions. It is this situation that respondents now contend is applicable to the Island of Guam.

But there is, of course, a fundamental difference between the early legislation pertaining to the Philippine Islands and Porto Rico and Section 31 of the Organic Act of Guam. As pointed out above, in legislating in the case of the Philippine Islands and Porto Rico, Congress expressly provided for collection of the tax by the administrative officials of those islands. Here, however, Congress made no such provision.[5]

Respondents seek to surmount this obstacle by equating the position of Guam with the Virgin Islands, which had an intermediate history. In the Naval Appropriations Act of July 12 1921 (Chap. 44, 42 Stat. 122), Congress extended the income tax laws in force in the United States to the Virgin Islands. In this instance, unlike the comparable statutes in the case of the Philippine Islands and Porto Rico, Congress did not direct that the tax be collected by local officials. Nevertheless the Treasury Department concluded (in 1934, 13 years after the Naval Appropriations Act of 1921 was passed) that "the 'United States' and the 'Virgin Islands' are separate and distinct taxing jurisdictions although their income tax laws arise from an identical statute applicable to each." (I. T. 2946, Cum. Bul. XIV-2, 109 (1935).) ***This ruling has never been challenged or tested in the courts.***

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[5]We shall presently see that there was a real purpose for this difference. Porto Rico and the Philippine Islands were given, at the same time, express power to repeal the Federal income tax laws and to impose their own tax.

Respondents, lifting themselves by their own boot straps, now contend that because the language used in the Organic Act of Guam in extending the income tax laws to Guam is like (but not identical with) the language used in the Naval Appropriations Act of 1921, Congress thereby adopted the administrative interpretation of the Treasury Department that a separate taxing jurisdiction had been created and thus endorsed a similar policy for Guam.[6] The Government's position is set out in I. T. 4040, *supra*, as follows:

> "The effect of section 31 of the Organic Act of Guam is to set up a separate income tax system for Guam which is a duplicate of the Federal income tax system. That section is substantially the same as a proviso contained in the Naval Appropriations Act of 1921 (42 Stat. 122), relating to the Virgin Islands, which reads as follows:
>
> "Provided further, that the income tax laws now in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands.
>
> "I. T. 2946 (C. B. XIV-2, 109 (1935)) holds in part that the United States and the Virgin Islands are separate and distinct taxing jurisdictions although their income tax laws arise from an identical statute applicable to each. It is stated in that ruling that it will be necessary in some sections of the law (Revenue Act of 1934), to substitute the words 'Vir-

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[6] *Cf. Helvering v. New York Trust Company*, 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361, where this Court disapproved a similar contention. (292 U. S. at 467, 54 S. Ct. at 810, 78 L. Ed. at 1368.)

gin Islands' for the words 'United States' in order to give the law proper effect in those islands. It is believed that the same principles are applicable to Guam in view of the above-mentioned provisions of the Organic Act of Guam.

We do not intend in this petition to set out the errors made by respondents in reaching this conclusion or to list the many indications in the Organic Act that Congress did not intend this result. At this point, we desire only to emphasize briefly the following:

1. There is no ambiguity in Section 31 of the Organic Act of Guam to justify resort to any legislative history. It is plain and simple and forthrightly proclaims that the "income tax laws in force in the United States" are "likewise in force in Guam." If there is any ambiguity, the ambiguity arises solely from the very legislative history that respondents urge as the solution for the ambiguity. Of course, rules of statutory construction are permissible to solve doubts and not to create them. *Cf. Ex parte Collett,* 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207. Accordingly, respondents' construction should not have been treated as an issue in the first place, let alone allowed to remain unanswered by the courts.

2. Even if an ambiguity did exist and resort to legislative history were justified, respondents have taken us, not to the legislative history of the Organic Act of Guam, but to the floor debates surrounding the enactment of the tax laws of 1916 and 1921. No authority we have been able to find has sanctioned such unbridled excursion into the field of statutory interpretation, especially in the absence of an underlying ambiguity.

3. But more than anything else, it is unbelievable that Congress could have intended the result reached here with all its ramifications without a clear declaration to that effect.

These issues were never resolved by the courts below largely because "of the position taken by the governments involved." [R. 49.] We therefore earnestly submit that the judgment of the courts below should be reviewed by this Court and the many real issues herein presented finally determined.[7]

II.

Equally Important, Guam, by Judicial Interpolation, Has Been Deprived of Substantial Fiscal Benefits Provided by Section 251 of the Internal Revenue Code Although Traditionally Congress Itself Has Directed Whether Those Benefits Should Be Granted or Withheld.

From the inception of our income tax history, Congress has displayed concern regarding the impact of our income tax laws on our possessions. Witness, for example, the treatment it accorded the Philippine Islands and Porto Rico at a time tax rates were far less rigorous than they are now. As early as 1917, Congress gave Porto Rico and the Philippine Islands the express power to amend, alter, modify or repeal the Federal income tax laws in

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[7]Compare the following from the dissenting opinion of Mr. Justice Jackson in *Brownell v. Singer*, 74 S. Ct. 548 (April 5, 1954): "The Court's one-word decision reverses concurring judgments of three highly respected courts. . . . I think this Court owes those courts and the legal profession something more than a reference to an inapplicable decision. The facts of this case present novel questions that this Court should face and on which it should render a reasoned decision."

force on those islands and to enact their own income tax laws. The Revenue Act of 1917 (Chap. 63, 40 Stat. 300), in imposing a war income tax in addition to the normal tax levy under the 1916 Act, specifically provided:

> "Sec. 5. That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively."

The same provision was carried over into the Revenue Act of 1918. (Chap. 18, 40 Stat. 1057, Sec. 261.)

So far as the Philippine Islands and Porto Rico are concerned, the taxes imposed by act of Congress ended in the year 1919, when the legislatures of each of these possessions (1) enacted local income taxes pursuant to authority granted by the Revenue Act of 1917 and repeated in the Revenue Act of 1918 and (2) repealed the applicable Federal income tax legislation. Philippine Income Tax of March 7, 1919 (Act No. 2833), 14 Public Laws of Philippine Islands, Section 20, page 241; Laws of Porto Rico (1919), Act No. 80, approved June 26, 1919, pages 612, 670.

In the instant case a similar pattern is revealed. Guam, like Porto Rico and the Philippine Islands, was given the right and power to enact its own income tax legislation. See Section 11 of the Organic Act of Guam (48 U. S. C., Sec. 1423a) which provides, in part, as follows:

> ". . . Taxes and assessments on property, *internal revenues*, sales, license fees, and royalties for franchises, privileges and concessions *may be imposed for purposes of the government of Guam as may be uni-*

formly provided by the legislature of Guam . . . ."
(Emphasis supplied.)

While Congress did not give Guam the "power . . . to amend, alter, modify or repeal the income tax laws in force" in Guam, it did continue in effect, as we will shortly show, the protective provisions of Sections 251 and 252 of the Internal Revenue Code which largely serve the same practical purpose. Thus, the pattern adopted for the Philippine Islands and Porto Rico was repeated here.

The courts below, however, again relying on Congressional history that was not only without purpose but also inadequate, destroyed the balanced relationship between Section 11 of the Organic Act of Guam and Sections 251 and 252 of the Internal Revenue Code by ruling that Section 251 no longer has applicability to Guam. To arrive at this conclusion the courts below ignored all of the following:

(1) Section 31 of the Organic Act of Guam provides that "The income tax laws in force in the United States of America . . . shall be held to be *likewise* in force in Guam." Since Sections 251 and 252 of the Internal Revenue Code unquestionably are part of the "income tax laws in force in the United States of America," it is plain that taxpayers on Guam are entitled to the benefits of those sections regardless of whether Section 31 of the Organic Act imposes a Federal or territorial tax.

(2) There is no need to construe the many sections of the Internal Revenue Code to divine a Congressional intent regarding this matter; for Section 251(d) was created expressly to set out the feeling of Congress with regard to the application of Section 251. The sole purpose of Section 251(d) is to exclude from the benefits of Section 251 the possessions Congress did not wish to bring within

its scope. Since Guam is not included among the possessions denied the protection of that section, the conclusion is inescapable that Congress meant Section 251 to remain in full force and effect on Guam.

(3) Nor was this an oversight. At the very time Congress was enacting the Organic Act of Guam it had under consideration an amendment to paragraph (d) of Section 251. The Organic Act of Guam became law on August 1, 1950. On that day, Section 251(d) provided as follows:

> "(d) Definition.—As used in this section, the term 'possession of the United States' does not include the Virgin Islands of the United States."

On September 23, 1950, paragraph (d) was amended by Congress to read as follows:

> "(d) Definition.—As used in this section the term 'possession of the United States' does not include the Virgin Islands of the United States, and such term when used with respect to the citizens of the United States does not include Porto Rico."

The failure to include the Island of Guam within that exception when the amendment of that section and the Organic Act of Guam were before it at the same time establishes, we submit, that Congress did not intend to deprive Guamanian taxpayers of the benefit of Section 251.

(4) Further demonstrating that the failure to deny application of Section 251 to Guam was not an oversight is the history of the Virgin Islands which, in other respects, is so important to respondents. At the time Congress enacted the Naval Appropriations Act of 1921 (Chap. 44, 42 Stat. 122), in which it extended the income tax laws in force in the United States to the Virgin Islands by virtue of language comparable to that used instantly, Con-

gress took special pains to exclude the Virgin Islands from the benefits of Section 251 (then Sec. 262 of the Rev. Act of 1921) by express provision. (Rev. Act of 1921, Chap. 136, 42 Stat. 227, Sec. 262(3)(c).) Section 262(3)(c) was then amended to read as follows:

> "(c) As used in this section the term 'possession of the United States' does not include the Virgin Islands of the United States."

In the instant case, however, Congress did not similarly amend Section 251, which in view of the fact that it concurrently with the passage of the Organic Act of Guam was otherwise amending Sections 251(d), is indeed convincing.

All these significant policy considerations,[8] the importance of which can be gleaned from close Congressional attention to Sections 251 and 252, were hardly treated, or not at all, by the courts below and are presented for decision by this appeal. Surely a sound legislative policy of long standing should not be so lightly dismissed when there hangs in the balance the health of an island economy slowly recovering from the ravages of a devastating war. If the impact of the 1916 tax rates on Porto Rico and the Philippine Islands was a matter of concern to Congress, certainly the effect of the 1951 rates on Guam should not be so easily disregarded. No issue is now more meaningful to the Island of Guam.

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[8]We should not be unmindful of another important effect of Section 251. It attracts needed capital for the development of our possessions by granting the investor under certain circumstances exemption from taxation. This consideration is particularly important to the Island of Guam; for "As is well known Guam was in a combat area and most of its permanent buildings, governmental and otherwise, were destroyed." [Opinion of the District Court, R. 46.]

III.

The Decisions of the Courts Below Depart From Established Principles of Statutory Construction Laid Down by This Court.

The second conclusion of the courts below—that Section 251 of the Internal Revenue Code is no longer applicable to Guam—invades directly the field of legislative policy. This is especially repugnant in this instance since Congress expressly enacted paragraph (d) of Section 251 to limit the applicability of that section and has revised it, as occasion has required, to mirror its latest intentions. We have already seen that Congress was amending Section 251(d) at the very time it was enacting the Organic Act of Guam. We therefore must suppose that it would have followed its traditional practice of amending Section 251 if Guam was intended to be excluded from its scope.

There is still another defect in the reasoning of the courts below. The Organic Act of Guam was not, and is not, a tax statute. Its purpose was to create for Guam a system of constitutional government, to settle important problems of citizenship and to fix the powers of the legislative, executive and judicial branches of the government. Nowhere in the discussions surrounding the passage of the Organic Act of Guam did Congress specifically consider the effect of the Organic Act on Sections 251 and 252 of the Internal Revenue Code. In this connection it is significant that while the proposed law was submitted for comment to the State, Justice, Navy and Interior Departments it was not submitted to the Treasury Department or to the Bureau of Internal Revenue. Senate

Report No. 2109, 1950 U. S. Code Cong. Service, Vol. 2, p. 2840.

Nevertheless, the courts below exhibited no hesitation in holding that a general section of the Organic Act of Guam (Section 31) impliedly repealed a prior, specially-considered, express law set out in another act (Section 251 of the Internal Revenue Code). This is in contravention to all rules of statutory construction laid down by this Court as we understand them. See *Ex parte Crow Dog,* 109 U. S. 556, 3 S. Ct. 396, 27 L. Ed 1030, where this Court said:

> "The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is, *generalia specialibus non derogant.* 'The general principle to be applied,' said Bovill, C. J., in *Thorpe v. Adams,* L. R. 6 C. P. 135, 'to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together.' 'And the reason is,' said Wood, V. C., in *Fitzgerald v. Champenys,* 30 L. J. N. S. Eq. 782; 2 Johns. and Hem. 31-54, 'that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case, and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.'" (109 U. S. at 570-571, 3 S. Ct. at 405, 27 L. Ed. at 1035.)

See, also:

Rodgers v. United States, 185 U. S. 83, 87.

IV.

The Decisions of the Courts Below Are at Variance With Similar Decisions of the Court of Appeals for the Second Circuit and of the Tax Court of the United States.

The principles we have just been discussing, that is to say, whether a benevolent Congressional tax policy, consistently followed by Congress over the years, can be impliedly repealed by a subsequent general law having no express reference to the existing policy, were recently considered by the Court of Appeals of the United States for the Second Circuit and the Tax Court of the United States. In each case, in language that could be adopted here without change, the courts held that the prior tax policy must remain in effect in the absence of a clear expression by Congress of its intention to the contrary.

In the first of these cases (*Estate of Smallwood,* 11 T. C. 740), the United States sought to collect a tax on the estate of a citizen of the United States resident in Porto Rico on the theory that the estates of all citizens of the United States are subject to the estate tax provisions of the Internal Revenue Code. The taxpayer (petitioner) opposed the assessment and argued that even though Section 802 of the Internal Revenue Code was broad enough to cover citizens of the United States residing in Porto Rico, such an interpretation would violate Congress' consistent "benevolent policy in regard to Puerto Rico which it would not change by a general provision of an internal revenue law containing no specific reference to Puerto Rico" (at 741).

The Tax Court, in upholding the taxpayer, said:

> "The petitioner concedes that Congress not only can change, but actually has made some changes in,

its policy towards Puerto Rico by making some internal revenue laws expressly applicable thereto. However, it points out that when Congress has intended any internal revenue law to apply to Puerto Rico it has always done two things: First, it has expressly stated in the law that it applies to Puerto Rico or that it applies to 'possessions,' and, second, it has expressly provided in the law that revenues collected thereunder from Puerto Rico shall be covered into the Treasury of Puerto Rico rather than into the Treasury of the United States, citing numerous examples. The provisions of the Internal Revenue Code imposing the estate tax in question are internal revenue laws (*Buscagalia v. Ballester*, 162 Fed. 2d 805; certiorari denied, 333 U. S. 816), but its provisions are general and it contains no specific statement that it applies to Puerto Rico or that revenues collected thereunder from Puerto Rican citizens based upon property situated in Puerto Rico are to be used exclusively for the benefit of Puerto Rico and its inhabitants.

"The citizens of Puerto Rico were made citizens of the United States by the Jones Act of March 2, 1917, *supra*. The decedent happened to be first a citizen of the United States and later acquired, in addition, Puerto Rican citizenship by going there to live. Undoubtedly there are many persons living in Puerto Rico who were first citizens thereof and thereafter acquired United States citizenship. However, all persons domiciled in Puerto Rico who are citizens of Puerto Rico and also citizens of the United States are equal under the law, which makes no distinction based on the time or means whereby they acquired either status. *Balzac v. Porto Rico*, 258 U. S. 298; Nationality Act of October 14, 1940, 54 Stat. 1137. The respondent advances no contrary argument.

Thus the law in question, if it applied at all, would apply to the estates of all Puerto Ricans.

"A clear expression of Congressional intention is required to reverse a general policy of government already well established. *Ex Parte Crow Dog,* 109 U. S. 556; *Saxonville Mills v. Russell,* 116 U. S. 13. Repeals or annulments by implication are not favored and no statute will be construed as repealing a prior one unless so clearly repugnant thereto as to admit of no other reasonable construction. *Cope v. Cope,* 137 U. S. 682; *United States v. Jackson,* 302 U. S. 628. A later statute, general in its terms but not expressly repealing a prior statute, does not affect the special provisions of the earlier statute. *Rodgers v. United States,* 185 U. S. 83. Congress legislates for territories and possessions under Article IV, Section 3, Clause 2 of the Constitution, whereas it legislates for states under Article I, Section , and 'Congress has in its enactments recognized * * * that provisions intended for the States did not embrace the territories, unless specially mentioned.' *Downes v. Bidwell,* 182 U. S. 244; *Munoz v. P. R. Ry. Co.,* 83 Fed. 2d 262; certiorari denied, 298 U. S. 689.

"Prior to the Revenue Act of 1934 the provisions of the estate tax law applied only to 'residents' of the United States, and persons domiciled in Puerto Rico were not regarded as residents of the United States. The Revenue Act of 1934, which merely added the word 'citizen' alongside of the word 'resident,' is not sufficient under the authorities cited above to indicate a change in policy of Congress toward Puerto Rico and citizens thereof, an implied repeal or annulment of the special provisions of the Jones Act by a later general provision, or an exercise of its sovereign authority over a possession."

The second of these cases (*Commissioner of Internal Revenue v. Estate of Rivera,* ..... F. 2d ....., Prentice-Hall Federal Tax Service, Vol. 4-A, page 133, 109 (U. S. Court of Appeals, Second Circuit, Docket No. 22896)) was decided only last month (June 10, 1954). In that case, the Court, in a corollary to *Estate of Smallwood, supra,* held that the estate of a citizen of Porto Rico who was also a citizen of the United States could not be taxed as that of a "nonresident not a citizen" under Sections 860 to 865 of the Internal Revenue Code. Here again, in the language of the issues in this case, the Court said:

> "In Estate of Smallwood, 11 T. C. 740 (1948), the Tax Court held that the estate of a citizen of the United States and Puerto Rico, domiciled in Puerto Rico at the time of his death, was not taxable under Part II of the estate tax law, Sections 810 to 851, I. R. C., relating to the estates of 'Citizens or Residents of the United States.' The Commissioner acquiesced in that decision. In the case before us, the Commissioner seeks to tax such an estate under Part III of the estate tax law, Sections 860 to 865, I. R. C., relating to the estate of 'Nonresidents Not Citizens of the United States.' No question arises concerning the power of Congress to make the estate tax law applicable to the estates of citizens of Puerto Rico; that Congress has such power is freely conceded by the taxpayer. The sole question is, has Congress exercised that power? We think it has not.
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> ". . . In 1917, Congress conferred full United States citizenship collectively upon all Puerto Rican citizens as of and from April 11, 1899, by the enactment of the Second Organic Act, *supra,* which was 'the practical equivalent of the state Constitution'

for Puerto Rico. Camunas v. Porto Rico Railway, L. & P. Co., 272 F. 924, 928 (C. C. A. 1, 1921). It continued and extended the policy of the First Organic Act of imposing upon Puerto Ricans full responsibility for their own local government, and giving them the right to have all sources of revenue tapped for insular expenses. The Second Organic Act further expressly excepted all internal revenue laws of the United States from operation in Puerto Rico.

"Courts do not favor repeals of statutes by implication. Where a general policy of government has been well established by statutes and recognized in court decisions, 'a clear expression of the intention of Congress' is required to justify a reversal. *Ex parte* Crow Dog, 109 U. S. 556, 572 (1883). 'It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special— * * * the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.' Rodgers v. United States, 185 U. S. 83, 87 (1902). And in the case of United States v. Sixty-seven Packages of Dry Goods, 58 U. S. 85, 93 (1854), the Supreme Court stated that 'In the interpretation of our system of revenue laws, which is very complicated * * * this court has not been disposed to apply with strictness the rule which repeals a prior statute by implication, where a subsequent one has made provision upon the same

subject, and differing in some respect from the former, but have been inclined to uphold both, unless the repugnancy is clear and positive, so as to leave no doubt as to the intent of Congress.' See also United States v. Jackson, 302 U. S. 628 (1938); Saxonville Mills v. Russell, 116 U. S. 13 (1865).

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"After considering all of the pertinent legislation in the proper setting of its historical background, we have been unable to find 'a clear expression of the intention of Congress' to depart from its previously expressed and implemented basic policy of fiscal independence for Puerto Rico, except in the manner and to the extent that we have mentioned above, nor have we been able to find any provision in the internal revenue statutory scheme which directs or permits the imposition of the assessed tax. When the framework and the interstices of the entire foregoing legislative pattern are analyzed, it seems to us that Congress never intended to make the estate tax law applicable to the estate of deceased Puerto Ricans."

Conclusion.

For the foregoing reasons, petitioner respectfully prays that this Court issue its writ of certiorari to the Court of Appeals for the Ninth Circuit to review the judgment of that Court.

Respectfully submitted,

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APPENDIX

INTERNAL REVENUE CODE:

SEC. 251. INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

(a) General Rule.—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) Amounts Received in United States.—Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) Tax in Case of Corporations.—

(1) Corporation tax.—A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14(b), and under section 15.

(2) Cross reference.—For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(d) Definition.—As used in this section the term "possession of the United States" does not include the Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico.

(e) Deductions.—

(1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement H in the case of a nonresident alien individual engaged in trade or business within the United States.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States.

(f) Credits Against Net Income.—A citizen of the United States entitled to the benefits of this section shall be allowed only one exemption under section 25(b).

(g) Allowance of Deductions and Credits.—Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this chapter only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(h) Credits Against Tax.—Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131.

(i) Prisoners of War and Internees.—In the case of a citizen of the United States taken as a prisoner of war while serving within a possession of the United States as a member of the military or naval forces of the United States, and in the case of a citizen interned by the enemy while serving as an employee within a possession of the United States—

(1) if such citizen was confined in any place not within a possession of the United States, such place of confinement shall, for the purposes of this section, be considered as within a possession of the United States; and

(2) any compensation received within the United States by such citizen attributable to the period of

time during which such citizen was a prisoner of war or interned by the enemy shall, for the purposes of subsection (b), be considered as compensation received outside the United States.

(j) Employees of United States.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

SEC. 252. CITIZENS OF POSSESSIONS OF UNITED STATES.

(a) Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this chapter only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources. This subsection shall have no application in the case of a citizen of Puerto Rico.

(b) Nothing in this section shall be construed to alter or amend the provisions of the Act entitled "An Act making appropriations for the naval service for the fiscal years ending June 30, 1922, and for other purposes," approved July 12, 1921, ch. 44, 42 Stat. 123 (U. S. C. title 48, §1397), relating to the imposition of income taxes in the Virgin Island of the United States.

